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CHIEF CLERK'S OFFICE

Illinois Commerce Commission )  
on its own motion )

Docket No. 01-0705

Northern Illinois Gas Company d/b/a NICOR )  
Gas Company )

Reconciliation of Revenues collected under )  
Gas Adjustment Charges with Actual Costs )  
prudently incurred )

Illinois Commerce Commission )  
on its own motion )

Docket No. 02-0067

Northern Illinois Gas Company d/b/a NICOR )  
Gas Company )

Proceeding to review Rider 4, Gas Cost, pursuant )  
to Section 9-244(c) of the Public Utilities Act )

Illinois Commerce Commission )  
on its own motion )

Docket No. 02-0725

Northern Illinois Gas Company d/b/a NICOR )  
Gas Company )

Reconciliation of Revenues collected under )  
Gas Adjustment Charges with Actual Costs )  
prudently incurred )

**COOK COUNTY STATE'S ATTORNEY'S OFFICE**  
**EMERGENCY MOTION TO COMPEL DISCOVERY**

The Cook County State's Attorney's Office ("CCSAO") hereby respectfully move the  
Administrative Law Judges ("ALJs") pursuant to Section 200.370 of the Commission's Rules of  
Practice to compel Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor") to

completely and comprehensively answer CCSAO's second set of data requests. In support of said motion, CCSAO/CUB states as follows:

1. CCSAO requests expedited ruling on this motion based on the imminent February 27 due date for Intervenor's rebuttal testimony.
2. At issue in this Motion to Compel is CCSAO's second set of data requests sent to Nicor on December 17, 2003. This data request merely requested Nicor to produce provide all workpapers, reports, notes, memoranda, correspondence, computations and/or calculations that were used by any Nicor witness who submitted and/or submits testimony in this proceeding. (Exhibit A). CCSAO requested a response by December 24, 2003.
3. On January 9, 2004, Nicor inappropriately responded to CCSAO's request with an objection. Nevertheless, Nicor responded by directing CCSAO to attachments to Nicor's direct testimony and documents Nicor had previously produced in discovery. (Exhibit B).
4. Since none of the documents referenced in Nicor's response failed to consist of any workpapers, handwritten notes summaries and emails, CCSAO discussed with Nicor the incompleteness of its response. This discussion occurred shortly before the status hearing on January 15, 2004.
5. On that same day, CCSAO sent an email to Nicor seeking cooperation from its experts to appropriately respond to CCSAO's second data request. CCSAO emphasized that CCSAO had disclosed 71 pages of handwritten notes. Moreover, CCSAO pointed out that it is against common sense to believe that Nicor's experts

would not have any handwritten notes, summaries, emails or workpapers in a case of this magnitude. Nicor agreed to respond. (Exhibit C).

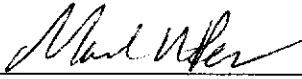
6. On February 2, 2004, Nicor supplemented its response by providing various documents alleged to be workpapers of its witnesses Feingold and Moretti. No other Nicor witness produced any additional documentation. (Exhibit D).
7. On February 3, 2004, CCSAO contacted Nicor by email highlighting that Nicor's response was merely a production of documents by two of Nicor witnesses. Yet, Nicor presented five witnesses in its direct testimony and four in its rebuttal. In addition, Nicor only produced 34 pages of workpapers from Feingold and one page for witness Morretti. CCSAO again expressed that the produced documentation was incomplete. (Exhibit E). CCSAO also expressed that it would anticipate an expedited supplemental response in light of the February 27<sup>th</sup> deadline.
8. Later, on February 3, 2004, CCSAO received Nicor's second supplemental response which merely contained additional documents from Nicor's witness Feingold. (Exhibit F).
9. On February 6, 2004, CCSAO for its fourth time, expressed disappointment and frustration that the documentation produced was insufficient. (Exhibit G) In addition, CCSAO still had not received any documents from any other witnesses. Since Nicor had since December to respond, CCSAO requested to know by February 9, 2004 whether discovery is complete.

10. Later that same day, on February 6, 2004 Nicor sent its third supplemental response. (Exhibit H) At the conclusion of the response Nicor noted as it had in each of the previous responses "Nicor Gas reserves the opportunity to supplement this response as appropriate." *Nicor Gas Company Response to Cook County State's Attorney's Office Second Data Request, 3<sup>rd</sup> Supp., February 6, 2004.* With the next round of testimony due by CCSAO and CUB's witness on February 27, 2004 the time is past for waiting for any other supplemental responses from Nicor.
11. CCSAO has consulted with attorneys from Nicor and reasonable attempts to resolve differences has failed. 83 Ill. Admin. Code Section 200.350. CCSAO notified Nicor regarding discovery concerns in e-mails dated January 15, 2004, February 3, 2004 and on February 6, 2004.
12. The Commissions rules provide "It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding..." 83 Ill. Admin. Code 200.340. CCSAO believes that common sense leads one to conclude that there are additional materials available that are responsive to its data request. Nicor should be compelled to provide the additional materials immediately or provide a reasonable explanation for their absence.

Wherefore, CCSAO and CUB respectfully request the ALJ compel Nicor to provide a complete and comprehensive response to CCSAO's Second Set of Data Requests to Nicor without further delay. To the extent that Nicor believes that any of the responsive documents are privileged that they be produced instanter to the ALJ's for an in camera examination and ruling on the alleged privilege. Further, we request an expedited schedule on this motion to compel.

Respectfully,

**RICHARD A. DEVINE**  
COOK COUNTY STATE'S ATTORNEY

By: 

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STATE OF ILLINOIS       )  
                                  ) SS.  
COUNTY OF COOK )

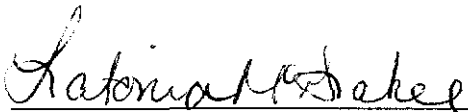
**VERIFICATION**

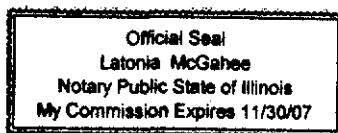
**NOW COMES MARK N. PERA**, who, after first being sworn, deposes and says:

1.       That he is an Assistant State's Attorney in Cook County assigned to represent the People of Cook County in any proceedings in connection with the attached Cook County State's Attorney's Office Emergency Motion To Compel Discovery; and
2.       That he has read the attached Cook County State's Attorney's Office and the Emergency Motion To Compel Discovery that the facts alleged therein are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
MARK N. PERA

**SUBSCRIBED AND SWORN** to  
before me this 10<sup>th</sup> day  
of February, 2004.

  
\_\_\_\_\_  
Notary Public



**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**


Illinois Commerce Commission	)	
on its own motion	)	
	)	Docket No. 01-0705
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Gas Adjustment Charges with Actual Costs	)	
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**NOTICE OF FILING**

TO: See Attached Service List

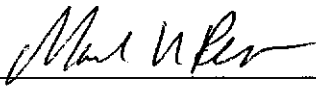
**PLEASE TAKE NOTICE** that on this date February 10, 2004, we have filed by sending by Federal Express today to the Chief Clerk of the Illinois Commerce Commission the enclosed Cook County State's Attorney's Office Emergency Motion To Compel Discovery in the above-captioned docket.

**RICHARD A. DEVINE**  
State's Attorney of Cook County

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**CERTIFICATE OF SERVICE**

**I, MARK N. PERA**, hereby certify that a copy of the enclosed Cook County State's Attorney's Office Emergency Motion To Compel Discovery were served on all parties on the attached list on the 10<sup>th</sup> day of February 2004 by hand delivery, or Federal Express, or electronic mail, or U.S. first class mail prepaid.

By:   
Mark N. Pera  
Assistant State's Attorney



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